

## ADMINISTRATIVE ORDER

### ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

FAULK & SONS INC )  
3610 US HIGHWAY 80 WEST )  
PHENIX CITY, ALABAMA )

ADMINISTRATIVE  
ORDER No 09-XXX-WP

GENERAL NPDES PERMIT No. ALG 180419 )  
GENERAL NPDES PERMIT No. ALG 180604)

### FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.) and the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 to 22-22-14, (2006 Rplc. Vol.); the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter “the Department”) makes the following FINDINGS:

1. Faulk & Sons, Inc. (hereinafter, “Permittee”) operates two auto salvage facilities (hereinafter the “Facilities”) located at 3610 Highway 80 West and 39<sup>th</sup> Avenue off Highway 80, in Phenix City, Russell County, Alabama. The Facilities discharged pollutants from a point source into Holland Creek, a water of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. On April 3, 2003, the Department issued General National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit Number ALG180419 (hereinafter the “Permit #1”) to the Permittee for the location at 3610 Highway 80 West. Permit #1 expired on September 30, 2007. The Permit establishes limitations on the discharge of pollutants from point sources, designated therein as outfall number DSN001-1 into Holland Creek, a water of the state.

On October 17, 2007, the Department re-issued NPDES Permit Number ALG180604 (hereinafter the “Permit #2”) to the Permittee for the location at 39<sup>th</sup> Avenue off Highway 80. Permit #2 will expire September 30, 2012. Permit #2 establishes limitations on the discharge of pollutants from point sources, designated therein as outfall numbers DSN001-1 and DSN001-2 into Holland Creek, a water of the state. Both Permits requires that the Permittee monitor its discharges and submit semi-annually Discharge Monitoring Reports (hereinafter “DMRs”) to the Department describing the analytical results. In addition, the Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the

terms and conditions of the Permits, and it also requires the documentation and implementation of a Best Management Practices (hereinafter "BMP") plan.

5. The Permittee violated Part II. F. 1. of Permit #1 by failing to submit a renewal application in a timely manner. The Permittee should have submitted a renewal application on or before July 2, 2007, at least ninety-days prior to the expiration date of the Permit. Failure of the permittee to submit the appropriate application material for reauthorization under the permit at least 90 days prior to the permit's expiration voided the automatic continuation of the authorization to discharge under the permit as provided by ADEM Administrative Code Rule 335-6-6-.06. As a result of the Permit expiration, all discharges from outfall 0011 into Holland Creek have been unpermitted since September 30, 2007. Any further discharges will remain unpermitted until the date of the Permit reissuance.

6. On June 20, 2008, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Facility located at 3610 Highway 80 West. At the time of inspection, the Permit #1 had expired and the Department had yet to receive a renewal application from the Permittee.

7. On July 17, 2008, the Permittee was issued a Notice of Violation (hereinafter "NOV") and a written copy of the CEI Report from the Department for the June 20, 2008, inspection. The Department received a written response from the Permittee on February 19, 2009, requesting that Permit #1 be terminated.

8. The Permittee has violated Part I. C. 1. b. by failing to submit Discharge Monitoring Report (hereinafter "DMRs") in accordance with Permit #1 for Outfall DSN001-1. The DMRs for DSN001-1 should have been submitted on a semi-annual

basis. The Permittee has failed to submit DMRs for outfall DSN001-1 for the first six months of 2007.

9. On March 31, 2009, the Department conducted a Compliance Sampling Inspection (hereinafter "CSI") at the Facility located at 3610 Highway 80 West, based upon the Permittee's written response received on February 19, 2009, requesting the Department to terminate Permit #1. The Department documented the following concerns during the inspection: (1) On-site and off-site erosion and sedimentation were observed; (2) A standing puddle with an oil sheen was observed; and (3) Salvage and scrap material was still on-site.

10. On January 15, 2007, the Department conducted a CEI at the Facility on 39<sup>th</sup> Avenue off Highway 80, in Phenix City. Thereafter, on May 21, 2007, the Permittee was issued a NOV and a written copy of the CEI Report for Permit #2. The NOV required that the Permittee submit to the Department within forty-five days from receipt of the NOV a written report detailing the steps that have been taken or are being taken to correct the violations noted in the NOV. The report was due to be submitted to the Department on or before July 19, 2007. Thereafter, on February 6, 2009, the Department received a report from the Permittee explaining their Best Management Plan (hereinafter "BMP") Procedure, however, the BMP Plan was incomplete.

11. On June 20, 2008, the Department conducted a second CEI at the Facility located on 39<sup>th</sup> Avenue off Highway 80. The Permittee has violated Part IV. A. 4. of Permit #2 by failing to provide a copy of the BMP plan and the training and inspection records. These records should be on-site and readily available to the Department during an inspection.

12. On March 31, 2009, the Department conducted a CSI at the Facility located on 39<sup>th</sup> Avenue off Highway 80. The following concerns were documented during the inspection: (1) The Department observed on-site erosion and sedimentation; (2) Erosion rills and gullies were formed on-site; (3) Sediment was observed leaving the site and was being deposited on adjacent property; (4) The chemicals and fuels located on-site were not being handled properly; (5) At the time of the inspection, stormwater was discharging at multiple locations from the site; and (6) No paperwork was readily available for review during the inspection.

13. The Permittee has violated Part I. C. 1. b. of Permit #2 by failing to submit the DMRs in accordance with Permit #2 for Outfalls DSN001-1 and DSN001-2. The DMRs for DSN001-1 and DSN001-2 should have been submitted on a semi-annual basis. The Permittee has failed to submit DMRs for outfalls DSN001-1 and DSN001-2 for the years 2007 and 2008.

Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided; however, the total penalty assessed in an order issued by the Department shall

not exceed \$250,000.00 each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A.     **SERIOUSNESS OF THE VIOLATION:**     Violations of Permit #1 (ALG180419), consisted of non-submittal of renewal application, inadequate recordkeeping and non-submittal of DMRs for DSN001-1 for 2007. Violations of Permit #2 (ALG180604), consisted of inadequate BMP measures and recordkeeping and non-submittal of DMRs for outfalls DSN001-1 and DSN001-2 for 2007 and 2008. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B.     **THE STANDARD OF CARE:** The Permittee failed to achieve compliance with the terms and conditions of the Permits by failing to comply with the monitoring and requirements of the Permits.

C.     **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit.

D.     **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:**     The Department is not aware of any efforts made by the Permittee to minimize or mitigate the effects upon the environment.

E.     **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a prior violation of discharging without a permit. On February 24, 2003, the Permittee was issued a NOV citing that it was discharging without a permit. On May 21, 2007, the Permittee was issued a Notice of Violation (hereinafter "NOV") that required a written report. However, the Permittee failed to provide a timely response.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18) c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement and concludes that the penalty amount is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$24,800.00 for the violations stated herein.

B. That all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. That the Permittee shall prepare and submit to the Department, not later than thirty days after the receipt of this Order; an Engineering Report that includes a schedule for implementation (i.e., a Compliance Plan) and that identifies all potential causes of noncompliance. The report must summarize the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES

Permit Numbers ALG180419 and ALG180604. At a minimum, the Permittee shall consider the following in making its determination: the need for changes in maintenance and operating procedures. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance with the NPDES Permit #1 and #2, then the Permittee shall modify the report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report within 180 days after the issuance of this Order.

D. The Permittee shall comply with all other terms, conditions, and limitations of its NPDES Permits after the issuance of this Administrative Order.

E. That this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

F. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

G. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provision hereof shall remain in full force and effect.

H. That, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

I. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

J. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Onis "Trey" Glenn, III,  
Director